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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 10/797,644 | 03/09/2004 | Glenn A. Roberson JR. | AXIG-00101 | 4205 |
| 28960 | 7590 | 09/08/2005 | EXAMINER | |
| HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086 | | | | KRAMER, DEAN J |
| ART UNIT | | PAPER NUMBER | | |
| | | 3652 | | |

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/797,644 | ROBERSON ET AL. |
| | Examiner | Art Unit |
| | Dean J. Kramer | 3652 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 August 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8, 12-27 and 31-38 is/are rejected.
- 7) Claim(s) 9-11 and 28-30 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 August 2005 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed August 12, 2005 and the remarks presented therewith have been carefully considered. However, they are not deemed to be fully persuasive.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 16, 20-27, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Rourke (U.S. Pat. # 6,416,097).

O'Rourke shows a sifting device comprising a detachable scoop head (12), a detachable DC motor assembly (24), a detachable handle (14) coupled to the motor via a coupling (14'), and a power pack (30', 30", 26) located in the proximal end of the handle thereby inherently creating a "counterweight" relative to the scoop head (12) when the device is supported at coupling (14'). In response to applicant's argument that O'Rourke's handle portion (14) is not detachable from the *vibrating mechanism* (22), it is pointed out that claims 1 and 20 recite a detachable handle coupled to a "motor assembly". O'Rourke's detachable handle portion (14) is deemed to be releasably coupled to a motor assembly (24) in that this motor could be removed from within the hollow handle once its wires were disconnected. Further, contrary to applicant's assertion that O'Rourke does not teach separation of its motor from its battery, the

battery (26), as shown in Figures 3 and 4, is a standard AA battery that is removable from between contact members (30',30"). Also, when the O'Rourke device is lifted by holding portion (14') between a user's fingers, the power pack (26,30',30") would inherently form a weight counter to the weight of the scoop head. In other words, it would have a downward weight force on the opposite side of the holding point (i.e. portion 14') from the downward weight force of the scoop head.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 12-15, 17-19, 31-34, and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke ('097) in view O'Rourke (U.S. Pat. # 6,022,058).

The O'Rourke ('058) patent shows a sifting tool substantially similar to the O'Rourke ('097) tool presented above in section 2, but the ('058) scoop head contains slotted openings (16', 18', 19') on all of its wall members. The O'Rourke ('058) scoop head also has an extended portion (25) directed upwardly and outwardly from the bottom wall (16) at "about" a fifteen degree angle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide parallel slots in two side walls and back wall (18) of the O'Rourke ('097) scoop head as taught by the O'Rourke ('058) patent in order to more efficiently sift small items, such as bedding, therefrom. It also would have been obvious to slightly angle a distal portion from the bottom wall upwardly and outwardly, similar to that shown in Figure 3 of the ('058) patent, so that the waste material collected would be less likely to fall from the front open end of the head. It is noted that while the O'Rourke ('058) patent broadly discloses that the angle of inclination of its extended portion (25) is "about" fifteen degrees relative to the bottom wall (16), it would have been obvious to extend the distal portion of the modified ('097) scoop at any small acute angle that could be considered "about" fifteen degrees (e.g. twenty degrees) so long as the scoop could effectively slide under the waste to be collected while retaining the same as the material is being sifted. Regarding claims 17-19 and 36-38, it would have been an obvious matter of design choice to form the resulting scoop head out of metal or any other rigid and durable material especially since applicant has not specifically disclosed that this particular material solves any stated problem or is for any critical purpose, and it

appears that the device would perform equally well with its scoop head made of any relatively lightweight, sturdy material that would be easy to clean and maintain.

Allowable Subject Matter

5. Claims 9-11 and 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Drawings

6. The drawings were received on 8/12/05. These drawings are approved by the examiner.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3652

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (571) 272-6926. The examiner can normally be reached on Mon., Tues., Thurs., Fri. (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Dean J. Kramer
Primary Examiner
Art Unit 3652

9/5/05

Djk
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